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JUN 04 2003

OFFICE OF PETITIONS

In re Application of : DECISION ON PETITION TO
Savoie & Boulay : WITHDRAW HOLDING OF
Application No. 09/838,560 : ABANDONMENT AND PETITION
Filed: 20 April, 2001 : UNDER 37 CFR 1.47(a)
Attorney Docket No. 12971-1US-1-RE :

This is in response to the communication filed on 23 May, 2003, which is treated as a petition to withdraw the holding of abandonment and a renewed petition under 37 CFR 1.47(a) on 23 November, 2001.

The petition is **DISMISSED**.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition under 37 CFR 1.181" or as described within, under 37 CFR 1.137(a) or (b). This is not a final agency action.

This application became abandoned on 5 June, 2002, for failure to submit a timely response to the decision on petition mailed on 4 April, 2002, which set a two (2) month period for reply. No extension of the time for reply under 37 CFR 1.136(a) was obtained. Notice of Abandonment was mailed on 11 March, 2003.

Petitioner asserts that a renewed petition was timely filed on 5 July, 2002, along with a one (1) month time extension and a

declaration executed by the previously non-signing inventor. In support, petitioners have presented a cover sheet itemizing the filing of a response to the petition and purporting to contain a USPTO Office-date stamp of 5 July, 2002 and a copy of the renewed petition.

The petition is dismissed because the date stamp on the cover sheet is not legible such that it can be determined that the stamp is from the USPTO. While the date appears to be "02 Jul 5", the top part of the stamp indicating its origin is not readable. As such, it cannot be verified that the cover sheet and attachments were received in the USPTO on the date in question. Petitioners should present a cover sheet bearing a legible hand-stamp from the USPTO with any renewed petition.

Additionally, no oath or declaration signed by joint inventor Savoie is located among the papers received with the present request for reconsideration. Any renewed petition should be accompanied by a copy of the oath or declaration signed by the joint inventor.

ALTERNATIVE VENUE

Alternatively, petitioners may wish to consider filing a petition under 37 CFR 1.137(b), which now provides that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

(1) the required reply, unless previously filed. In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after 8 June, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

The filing of a petition under the unintentional standard cannot be intentionally delayed and therefore should be filed promptly. A person seeking revival due to unintentional delay cannot make a statement that the delay was unintentional unless the entire delay, including the delay from the date it was discovered that the application was abandoned until the filing of the petition to revive under 37 CFR 1.137(b), was unintentional. A statement that the delay was unintentional is not appropriate if petitioner intentionally delayed the filing of a petition for revival under 37 CFR 1.137(b).

Should petitioner decide to file a petition under 37 CFR 1.137(b), the current small-entity fee for a petition under 37 CFR 1.137(b) is \$650.00.

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

By FAX: (703) 308-6916
Attn: Office of Petitions

By hand: Crystal Plaza Four, Suite CP4-3C23
2201 South Clark Place
Arlington, VA 22202

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 308-6918.


Douglas I. Wood
Petitions Attorney
Office of Petitions

cf: PTO/SB/64
Privacy Act Stmt